199936052

Internal Revenue Service

401.06-00

Department of the Treasury

Washington, DC 20224

Telephone Number:

In Reference to:
OP:E:EP:T2
Date:

JUN 16 1999

Legend:

Individual A =

Individual B =

Custodian =

This letter is in response to your letter dated December 11, 1998, as supplemented by correspondence dated March 29, 1999, submitted on your behalf by your authorized representative, in which a private letter ruling was requested under section 401(a)(9) of the Internal Revenue Code ("Code").

The following facts and representations have been submitted on your behalf:

Individual A, whose date of birth was June 8, 1926, died on March 8, 1998. At the time of her death Individual A maintained an Individual Retirement Account ("IRA") with Custodian which she established by rollover of an IRA inherited from her deceased husband prior to her 70th birthday. Prior to reaching her required beginning date Individual A named her only child, Individual B, as the primary beneficiary of this IRA.

Individual A elected to receive required minimum distributions from the IRA over the joint life expectancy of Individual A and Individual B, but subject to the Minimum Distribution Incidental Benefit requirement ("MDIB") under section 401(a)(9) and the

284

regulations thereunder. Individual A received the minimum distribution for the year in which she attained age 70 1/2 and the year following (the year in which she died).

Pursuant to the Election Letter executed by Individual A in 1994, after having attained the age of 67, Individual A elected to recalculate her life expectancy annually. In accordance with the Election Letter, she reserved the right (both to herself and to her beneficiary) to take larger distributions than was required under Code section 401(a)(9). The Election Letter and beneficiary designations were still in effect when she reached her required beginning date.

As of the date of Individual A's death, Individual B was still named as the primary beneficiary on the IRA, and will take distributions over his remaining life expectancy, in accordance with the election made by Individual A. Pursuant to the Election Letter, Individual B may request larger distributions than that calculated under the minimum distribution requirements. Individual B wishes to name a contingent beneficiary to receive the remaining balance of the IRA, if any, upon his death. Individual B may name his spouse as the contingent beneficiary.

Based on the above, you request the following rulings:

(1) After the death of Individual A, the minimum distributions to Individual B will take place over Individual B's remaining (fixed) life expectancy, reduced one year for each year, in accordance with the election made by Individual A prior to her required beginning date and her death.

(2) As long as the IRA is kept in the name of Individual A, for the benefit of Individual B, and under Individual B's social security number, income tax will not be assessed on the IRA except as distributions are made to a beneficiary.

(3) The naming by Individual B of a contingent beneficiary, as permitted by the IRA Custodian, will not change the required minimum distributions and they must continue to be withdrawn as elected by Individual A over Individual B's life expectancy (unless accelerated by Individual B [or after his death, by the contingent beneficiary] at a faster rate).

(4) Since Individual B has the right to accelerate distributions faster than the minimum distribution schedule selected by Individual A, the entire IRA will be included in his estate upon his death for Federal estate tax purposes.

(5) If the IRA is included in Individual B's estate upon his death for Federal estate tax purposes because of his power to accelerate distributions, the IRA would also be subject to a marital deduction (assuming it qualifies for the

marital deduction) should Individual B name his spouse as contingent beneficiary on the IRA, in the event he dies before the IRA is exhausted.

Ruling Requests One, Two, and Three

Section 408(a) of the Code defines an IRA as a trust which meets the requirements of sections 408(a)(1) through 408(a)(6). Code section 408(a)(6) provides that under regulations prescribed by the Secretary, rules similar to the rules of Code section 401(a)(9) and the incidental death benefit requirements of Code section 401(a) shall apply to the distribution of the entire interest of an individual for whose benefit the trust is maintained.

Section 401(a)(9)(A) of the Code provides that a trust shall not constitute a qualified trust under this subsection unless the plan provides that the entire interest of each employee:

(i) will be distributed to such employee not later than the required beginning date,

(ii) will be distributed, beginning not later than the required beginning date, in accordance with regulations over the life of such employee or over the lives of such employee and a designated beneficiary (or over a period not extending beyond the life expectancy of such employee or the life expectancy of such employee and a designated beneficiary).

Section 401(a)(9)(B) of the Code provides, in part, that if distributions have begun under section 401(a)(9)(A)(ii) and the employee dies before the entire interest has been distributed to him, then the remaining portion of such interest will be distributed at least as rapidly as under the method of distribution being used under section 401(a)(9)(A)(ii) of the Code as of the date of his death.

Section 401(a)(9)(C) of the Code provides that, for purposes of this paragraph, the term required beginning date means April 1 of the calendar year following the later of (I) the calendar year in which the employee attains age 70 1/2, or (II) the calendar year in which the employee retires.

Section 1.401(a)(9)-1 of the proposed income tax regulations, Q&As F-1(b) and (c), provides, in relevant part, that the distribution required to be made on or before the employee's required beginning date shall be treated as the distribution required for the employee's first distribution calendar year. A calendar year for which a minimum distribution is required is a distribution calendar year. The first calendar year for which a distribution is required is an employee's first distribution calendar year. The distribution required for distribution calendar years (other than a distribution required to

be made on or before the employee's required beginning date) must be made on or before December 31 of that distribution calendar year.

Q&As 3 & 4 of section 1.401(a)(9)-1 of the proposed regulations provide that life expectancies for purposes of determining required distributions under section 401(a)(9) must be computed by use of the expected return multiples in Tables V and VI of section 1.72-9.

Code section 401(a)(9)(D) states that, for purposes of section 401(a)(9), the life expectancy of an employee and the employee's spouse (other than in the case of a life annuity) may be recalculated but not more frequently than annually.

Section 1.401(a)(9)-1 of the proposed regulations, Q&A E-8(b) provides that if the designated beneficiary is not the employee's spouse (or if the spouse's life expectancy is not being recalculated) and the life expectancy of the employee is being recalculated annually, the applicable life expectancy for determining the minimum distribution for each distribution calendar year will be determined by recalculating the employee's life expectancy but not recalculating the beneficiary's life expectancy. Such applicable life expectancy is the joint life and last survivor expectancy using the employee's attained age as of the employee's birthday in the distribution calendar year and an adjusted age of the designated beneficiary. The adjusted age of the designated beneficiary is determined as follows: First, the beneficiary's applicable life expectancy is calculated based on the beneficiary's attained age as of the beneficiary's birthday in the calendar year (described in section 1.401(a)(9)-1 of the proposed regulations, Q&A E-1) reduced by one for each calendar year which has elapsed since that calendar year. Upon the death of the employee, the recalculated life expectancy of the employee is reduced to zero in the calendar year following the calendar year of the employee's death. Thus, for determining the minimum distribution for such calendar year and subsequent calendar years, the applicable life expectancy is the applicable life expectancy of the designated beneficiary.

Section 401(a)(9)(E) of the Code defines the term "designated beneficiary" as any individual designated as a beneficiary by the employee. Section 1.401(a)(9)-1 of the proposed regulations, Q&A D-3(a) provides, in pertinent part, that for purposes of calculating the distribution period in section 401(a)(9)(A)(ii) (for distributions before death), the designated beneficiary will be determined as of the employee's required beginning date.

Section 408(d)(1) of the Code provides that any amount paid or distributed out of an Individual Retirement Account shall be included in gross income by the payee or distributee in the manner provided under section 72 of the Code.

257

Individual A elected to receive minimum distributions from the IRA over the joint life expectancy of her life and Individual B's life. She also elected to recalculate her life expectancy. In accordance with section 1.401(a)(9)-1 of the proposed regulations, Q&A E-8(b), upon Individual A's death, her recalculated life expectancy was reduced to zero in the calendar year following the calendar year of her death. Thus, for purposes of determining the minimum distribution for such calendar year and subsequent calendar years, the applicable life expectancy is the applicable life expectancy of the designated beneficiary, Individual B. Therefore, we conclude with respect to ruling request number one that after the death of Individual A, the minimum distributions to Individual B, will take place over Individual B's remaining life expectancy, reduced one year for each year, all in accordance with the election made by Individual A prior to her required beginning date and her death.

With respect to ruling request number two, since Individual B is the designated beneficiary of Individual A's IRA, and since distributions are distributed from the IRA in accordance with section 401(a)(9)(B)(i), we conclude that as long as the IRA satisfies the requirements of section 408(a)(1) through 408(a)(6) and is kept in the name of Individual A, for the benefit of Individual B, income taxes will not be assessed on the IRA except as distributions are made to Individual B and taxed to him under section 408(d)(1).

Regarding ruling request number three, Individual A named Individual B as her designated beneficiary prior to reaching her required beginning date. Pursuant to Q&A D-3(a) of section 401(a)(9)-1 of the proposed regulations, distributions under the IRA were made over the joint life expectancies of Individual A and Individual B. Pursuant to Q&A E-8 of section 401(a)(9)-1 of the proposed regulations, upon Individual A's death, subsequent distributions are to be made over Individual B's remaining life expectancy. Once distributions have begun, the designated beneficiary's life expectancy is fixed and, in general, once the IRA owner dies, the designated beneficiary may not be changed. Example 3 of Q&A E-8 of section 401(a)(9)-1 of the proposed regulations demonstrates that when the designated beneficiary's life expectancy is fixed at the time benefits commence such life expectancy is used after the designated beneficiary dies. Therefore, with respect to ruling request number three, we conclude that the naming by Individual B of a contingent beneficiary will not change required minimum distributions and they must continue to be withdrawn as elected by Individual A over Individual B's life expectancy (unless accelerated by Individual B, or after his death, by the contingent beneficiary at a faster rate).

Ruling Requests Four and Five

Section 2031 of the Code provides that the value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated.

Section 2033 of the Code provides that the value of the gross estate shall include the value of all property to the extent of the interest therein of the decedent at the time of his death.

Section 20.2031-1(a) of the Estate Tax Regulations provides that the value of the gross estate of a decedent who was a citizen or resident of the united States at the time of his death is the total value of the interests described in sections 2033 through 2044.

Section 2041(a)(2) of the Code provides that the value of the gross estate shall be determined by including the value at the time of death of all property to the extent of any property with respect to which the decedent has at the time of death a general power of appointment created after October 21, 1942, or with respect to which the decedent has at any time exercised or released such a power of appointment by a disposition that is of such nature that if it were a transfer of property owned by the decedent, such property would be includible in the decedent's gross estate under sections 2035 to 2038, inclusive.

Section 2041(b) of the Code provides that the term "general power of appointment" means a power that is exercisable in favor of the individual possessing the power, his estate, his creditors, or the creditors of his estate.

Section 20.2041-1(b) of the regulations provides that the term "power of appointment" includes all powers which are in substance and effect powers of appointment regardless of the nomenclature used in creating the power and regardless of local property law connotations. For example, if a trust instrument provides that the beneficiary may appropriate or consume the principal of the trust, the power to consume or appropriate is a power of appointment.

Section 2056(a) of the Code provides that for purposes of the tax imposed by section 2001 thereof, the value of the taxable estate shall, except as limited by subsection (b), be determined by deducing from the value of the gross estate an amount equal to the value of any interest in property which passes or has passed from the decedent to his surviving spouse, but only to the extent that such interest is includible in determining the value of the gross estate.

289

Section 2056(b) of the Code provides that where, on the lapse of time, on the occurrence of an event or contingency, or on the failure of an event or contingency to occur, an interest passing to the surviving spouse will terminate of fail, no deduction will be allowed under section 2056(a) with respect to the interest - (A) if an interest in the property passes or has passed from the decedent to any person other than the surviving spouse (or the estate of the spouse); and, (B) if by reason of such passing the person (or his heirs or assigns) may possess or enjoy any part of the property after the termination or failure of the interest passing to the surviving spouse.

Section 2056(b)(5) of the Code provides an exception to this "terminable interest" rule. Generally under section 2056(b)(5), in the case of an interest in property passing from the decedent, if his surviving spouse is entitled for life to all the income from the entire interest, or all the income from a specific portion, payable annually or at more frequent intervals, with power in the surviving spouse to appoint the entire interest, or such specific portion (exercisable in favor of such surviving spouse, or the estate of such surviving spouse, or in favor of either, whether or not in each case the power is exercisable in favor of others), and with no power in any other person to appoint any part of the interest, or such specific portion, to any person other than the surviving spouse - (A) the interest or such portion thereof so passing shall, for purposes of subsection (a), be considered as passing to the surviving spouse, and (B) no part of the interest so passing shall, for purposes of paragraph (1)(A), be considered as passing to any person other than the surviving spouse. The power to appoint, whether exercisable by will or during life, must be exercisable by such spouse alone and in all events.

Section 20.2056(b)-5(f)(6) of the regulations further provides that if a trust is created during the decedent's life, it is immaterial whether or not the interest passing in trust qualified under section 2056(b)(5) prior to the decedent's death. In addition, the regulation provides that if a trust may be terminated during the life of the surviving spouse, under her exercise of a power of appointment or by distribution of the corpus to her, the interest passing in trust satisfies the condition that the spouse must be entitled to all the income from the property if the spouse is (i) entitled to the income until the trust terminates, or (ii) has the right, exercisable in all events, to have the corpus distributed to her at any time during life.

In addition, sections 20.2056(b)-5(f)(8) of the regulations provides that the requirement that the surviving spouse must be entitled for life to all income, payable at least annually, will be satisfied if under the terms of the trust instrument the spouse has the right exercisable annually (or more frequently) to require distribution to herself of the trust income, and otherwise the trust income is to be accumulated and added to corpus.

Section 20.2056(b)-5(g)(1) of the regulations provides that the spouse's power of appointment will satisfy the requirements of section 2056(b)(5) provided the power is

fully exercisable in the spouse's favor at any time following the decedent's death, as for example, an unlimited power to invade corpus.

Based on the facts and representations submitted, we conclude with respect to ruling request number four that the remaining balance in the IRA at Individual B's death is includible in Individual B's gross estate under section 2041, because Individual B possesses a general power of appointment over the IRA property.

In the present case, Individual B wishes to name his wife as sole beneficiary of the IRA, in the event he dies before the entire remaining balance in the IRA has been distributed to him.

If Individual B's wife is designated as the sole beneficiary of the IRA, it is represented that she will have the right to accelerate distributions to herself (up to the entire amount of the IRA balance).

The IRA interest passing to Individual B's wife, meets the requirements of section 2056(b)(5) of the Code and applicable regulations. Individual B's wife has the power, exercisable by her alone and in all events, to accelerate withdrawals of the entire balance. Further, no person has a power to distribute trust income or corpus to anyone other than Individual B's wife during her lifetime. Thus, under the applicable regulations, Individual B's wife is entitled to all the income from corpus and possesses the requisite power to appoint corpus in her favor, exercisable by her alone, and in all events. Therefore, the IRA meets the requirements of section 2056(b)(5) of the Code and applicable regulations.

Accordingly, with respect to ruling request number five, if Individual B designates his wife as the sole beneficiary of the remaining IRA balance, the IRA would be eligible for a federal estate tax marital deduction under section 2056(b)(5).

These rulings are based on the assumption that the IRA referenced herein meets the requirements of section 408 of the Code at all relevant times.

In addition, these rulings are also based on the assumption that a valid election was made under section 1.408-8, Q&A-4(b) of the proposed regulations.

These rulings are directed only to the taxpayer who requested them. Section 6110(k)(3) of the Internal Revenue Code provides that they may not be used or cited by others as precedent.

291

Robert Vanderbeek

Pursuant to a power of attorney on file in this office, a copy of this letter is being sent to your authorized representative.

Sincerely yours

(signed) JOYCE E. FLOYD

Joyce E. Floyd
Chief, Employee Plans
Technical Branch 2

Enclosures:
Deleted copy of letter ruling
Form 437